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HOWREY LLP
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FALLS CHURCH, VA 22042

EXAMINER

BURCH, MELODY M

| ART UNIT | PAPER NUMBER |
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3683

| MAIL DATE | DELIVERY MODE |
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01/18/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/530,320

Applicant(s)

BIEKER, GUIDO

Examiner

Melody M. Burch

Art Unit

3683

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 October 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-19 and 21 is/are pending in the application.
- 4a) Of the above claim(s) 4,6,7,9,12 and 13 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,5,8,10,11,14-19 and 21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1,3-19 and 21 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 3, 5, 8, 10, 14, 17, 18, 19, and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 2207295 to Latshaw.

Re: claims 1, 5, 14, 19, and 21. Latshaw shows in figures 5 and 6 a magnetic rail brake for a rail vehicle shown in figure 3 comprising: a magnet supported from the rail vehicle, a guide assembly to guide the magnet for movement in a substantially vertical plane while allowing limited lateral movement, and an extension arm 74, the extension arm arranged to contact the rail vehicle at a distance from the magnet which is substantially greater than either the maximum extent of vertical movement or the maximum extent of lateral movement of the magnet to thereby reduce tilting of the magnet as shown.

Re: claim 3. Latshaw shows in figure 6 the limitation wherein the extension arm comprises a first stop surface 76.

Re: claim 8. Latshaw shows in figure 4 and discloses on pg. 2 lines 31-35 the limitation wherein the extension arm comprises adjustable stop means.

Re: claims 10 and 18. Latshaw discloses an actuation device connected to leads 45 causing the magnet to be attracted to a rail on which the rail vehicle travels.

Re: claim 17. Latshaw shows in figure 3 the limitation of the magnet being supported by suspension device comprising a compression or tension spring 60.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Latshaw in view of SU-998307 (SU'307).

Latshaw describes the invention substantially as set forth above, but lacks the limitation of a tilt detection device.

SU'307 teaches in the English abstract the use of a tilt detection device 1, 2, 3, 4.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the rail brake of Latshaw to have included a tilt detection device to determine the actual position of the brake in order to actively and accurately adjust the position as needed.

5. Claims 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Latshaw.

Latshaw describes the invention substantially as set forth above, including the limitation of constraining tilt, but is silent as to the exact range of constraint. "[W]here the general conditions of a claim are disclosed in the prior art, it is not inventive to

discover the optimum or workable ranges by routine experimentation." *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955).

Response to Amendment

6. The amendment to the claims filed on 10/19/07 does not comply with the requirements of 37 CFR 1.121(c) because the withdrawn claims lack the proper status identifier. Amendments to the claims filed on or after July 30, 2003 must comply with 37 CFR 1.121(c) which states:

(c) *Claims*. Amendments to a claim must be made by rewriting the entire claim with all changes (e.g., additions and deletions) as indicated in this subsection, except when the claim is being canceled. Each amendment document that includes a change to an existing claim, cancellation of an existing claim or addition of a new claim, must include a complete listing of all claims ever presented, including the text of all pending and withdrawn claims, in the application. The claim listing, including the text of the claims, in the amendment document will serve to replace all prior versions of the claims, in the application. In the claim listing, the status of every claim must be indicated after its claim number by using one of the following identifiers in a parenthetical expression: (Original), (Currently amended), (Canceled), (**Withdrawn**), (Previously presented), (New), and (Not entered).

Response to Arguments

7. Applicant's arguments filed 10/19/07 have been fully considered but they are not persuasive. Applicant argues that element 28 cannot be considered to form part of the rail brake unit and, thus, cannot be considered to form part of the vehicle. Examiner disagrees. Element 28 forms a part of the rail brake unit which, in turn, forms a part of the rail vehicle. Since element 28 forms a part of a brake unit of a rail vehicle, element 28 forms a part of a rail vehicle, as broadly recited. Applicant also argues that element

28 moves vertically and laterally together with the magnet assemblies 42. Examiner agrees to an extent but notes that there exists some relative movement between the magnet assemblies and element 28 since the magnet assemblies can pivot with respect to element 28 as explained in the column in which the claims begin in lines 35-38.

Alternatively, Examiner notes that element 74 includes another stop or the surface that abuts against leaf spring 52 which moves with respect to rail vehicle portion 14 via element 59 shown in figure 7. Accordingly, the rejections using Latshaw have been maintained.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melody M. Burch whose telephone number is 571-272-7114. The examiner can normally be reached on Monday-Friday (6:30 AM-3:00 PM).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Siconolfi can be reached on 571-272-7124. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

mmb
January 7, 2008

Melody M. Burch
Melody M. Burch
Primary Examiner
Art Unit 3683

1/7/08